**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.4847 OF 2006**

Union of India & Ors. ..Petitioners.

Vs.

Arvind Shivaji Jadhav ..Respondent.

Mrs.N.V.M<asurkar with Mr.G.Hariharan i/b.Mr.S.S.Sarkar for the Petitioners.

Mr.Sandeep V. Marne for the Respondent.

**CORAM: F.I. REBELLO AND**
**R.M. SAVANT, JJ.**
**DATED: 5TH MARCH, 2007.**

**P.C. :**

Rule. Heard forthwith.

2. The Respondents herein, pursuant to an advertisement issued by the Petitioners, applied for the post which was known as "EDBPM" (Extra Departmental Branch Post Master). That vacancy has arisen as the incumbent one Shri Kulkarni had left the post. In the selection done, the Respondent was found to be the most meritorious. However, before the Respondent could be appointed, Kulkarni was allowed to rejoin the post. The Respondent therefore could not be appointed on the vacancy.

The appointment of Kulkarni was also not struck down as Kulkarni was not a party to the petition.

3. The tribunal however by the impugned order dated 22.7.2003 directed the State/Respondents before it to allow the Applicant Respondent No.4 before us to be appointed if any vacancy arises in the post of EDBPM in the Division and if he is otherwise found suitable.

4. It appears that another vacancy arose, the Petitioner was called for the interview. It was however the Petitioner's contention that he should have been appointed without any interview. The tribunal, on the facts noted in its earlier order, directed the Respondents to give the applicant appointment as EDBPM in the next available vacancy in the Division. As the vacancy to which the Petitioner claimed the right was not available, against the order 19.8.2005, a review was preferred, which was disposed of on 2.1.2006. The Petitioner has challenged all these three orders.

5. on behalf of the Respondents, it is contended that the challenge to the order is belated as it was passed on 20.7.2003 and had become final and, in

these circumstances, the orders dated 19.8.2005 and 2.1.2006 cannot be faulted.

6. We have heard the learned counsel for the parties. Even in the order dated 22.7.2003 passed by the Central Administrative Tribunal, Mumbai in Original Application No.340 of 2000, the tribunal was pleased to issue the following directions :

> "We direct the respondents to consider him for appointment in any other vacant post available in the Division, if any vacancy arises in the post of EDBPM in the said division and if otherwise found suitable, may give him appointment to that post. With this direction we dispose of this OA. No order as to costs."

In other words, the direction was not to appoint the Respondent herein as a matter of fact but that was subject to the Respondent if otherwise found suitable. This would bring in an element of the Petitioners finding the Respondent suitable for employment.

7. The other important aspect of the matter is there was one post which was advertised. Once that post was no longer available as appointment to that

post could not have been made as the selection procedure has to end and no direction could have been issued to the Petitioners to appoint the Respondents in the vacancy which may arise in future. All public vacancies are required to be filled in by public advertisements or by following due procedure as the candidate who has been selected for one post can claim no right to other post which was not advertised, to which he has not applied. The order of the tribunal is therefore clearly illegal.

8. The subsequent orders of the tribunal no doubt may be for the purpose of giving effect to the order dated 22.7.2003. The tribunal in the subsequent orders did not note the directions as to suitability in the first order.

9. Having found that the Respondent had no right and that though the challenge to the order dated 22.7.2003 is belated, in our opinion, considering that the order suffered from an error of law apparent on the face of the record, the orders must be quashed and set aside.

10. In the light of that, the order dated 2.7.2002,

19.8.2005 and 2.1.2006 are quashed and set aside. The rule is made absolute accordingly. No order as to costs.

11. As as when there are vacancies, the Respondent can always apply and the Petitioner may consider him according to his merits.

**(R.M. SAVANT, J.)** **(F.I. REBELLO, J.)**